

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING
JUDGE SUSANNE S. SHAW,

No. 183.

NOTICE OF FORMAL PROCEEDINGS

To Susanne S. Shaw, a judge of the Orange County Municipal Court from January 7, 1985 to August 7, 1998, and a judge of the Orange County Unified Superior Court from August 10, 1998 to September 30, 2006:

Preliminary investigation pursuant to Rules of the Commission on Judicial Performance, rules 109 and 111, having been made, the Commission on Judicial Performance has concluded that formal proceedings should be instituted to inquire into the charges specified against you herein.

By the following allegations, you are charged with willful misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and improper action within the meaning of article VI, section 18 of the California Constitution providing for removal, censure, or public or private admonishment of a judge or former judge, to wit:

COUNT ONE

In June 2003, you presided over the trial of *People v. Ramon Quila*, No. 02HF0567, in which the defendant was accused of stabbing and attempting to murder another attendee at a wedding reception. On October 26, 2004, the Court of Appeal affirmed the defendant's convictions, but severely criticized your judicial demeanor during the trial. (See *People v. Quila* (Oct. 26, 2004, G032666) [nonpub. opn.].)

A. During the trial, you lacked patience, dignity and courtesy when dealing with witnesses and counsel, as follows:

1. When defense counsel asked the victim to draw a diagram during cross-examination, the following exchange occurred:

Q. Could you please, with the court's permission, go down to that board and draw a diagram, if you could, of the inside area, the lobby area, of the parking lot or the outside?

A. Like what do you mean?

THE COURT: Well, is the hall rectangular? Is it square or rectangular or is it round?

THE WITNESS: Square.

THE COURT: So you have to do this because you are the guy under oath, and then you can put [the] hall here and whatever and if that's the lobby, like that. And then think big, okay? Hold on a second. Here you are. Try the black one or the green one. Make it beautiful.

2. When the victim was being cross-examined about being treated at the hospital after he had been stabbed, the following exchange occurred:

Q. Were you in a bed or a chair?

A. In a bed.

Q. In a bed? And what point in time did you get an IV, if at all?

THE COURT: Who cares? How's that relevant?

3. When a Spanish speaking witness ("Mr. G.") was testifying through an interpreter about his location at a particular time, you said:

But, Mr. [G.], you were just asked if you were outside after that and you said no. Outside is the same in English as it is in Spanish. Outside is under the – not under a ceiling. Outside means under the air and the front entrance. Outside a building means outside. So you are giving inconsistent statements. If you don't understand a question, ask us, okay?

4. When the prosecution was examining its expert witness, a trauma surgeon, on his qualifications, you said to the witness, "How many stab wounds do you think you can estimate you have seen in your wonderful tour of duty as a trauma surgeon?"

5. During defense counsel's cross-examination of the same expert about the victim's wounds, the following exchange occurred:

Q. How long will have death occurred absent antibiotic intake [sic]?

THE COURT: That's a silly --

[PROSECUTOR]: Objection, relevance.

THE COURT: You know what, that's kind of a silly question because they go to the hospital not voluntarily, do you know what I mean?

[DEFENSE COUNSEL]: Yes.

THE COURT: Well, you would have had the greatest malpractice suit in the whole world if you didn't fix him, but how long would it have taken to watch him die?

6. The following exchange occurred during defense counsel's cross-examination of the security guard:

Q. How do you know they were friends of Mr. Lemus? Did they look like him?

THE COURT: Well, my friends don't look like me. What kind of question is that?

THE WITNESS: I don't remember all the people that were there at the hall.

Q. What makes you say that they were Mr. Lemus's friends?

[PROSECUTOR]: That calls for speculation.

[DEFENSE COUNSEL]: Your Honor –

THE COURT: Overruled.

[DEFENSE COUNSEL]: -- the witness testified –

THE COURT: I know what he said. Excuse me, let me make the rulings. You do your part and I will do mine. Thanks.

7. The following exchange occurred later during defense counsel's cross-examination of the security guard:

Q. Okay. My question was those three people, Mr. Cuevas Quila was not there yet, so listen to the question, please.

THE COURT: Well, you don't know that he wasn't there yet.

[DEFENSE COUNSEL]: Initially he was not --

THE COURT: You know what, you make so many conclusions and you presume so much in your questions, counsel, and you're misstating the evidence and I'm not going to be a part of that, and that is my objection to you.

8. At one point, the interpreter for the security guard (Mr. G.) requested a clarification about the pronunciation of the name of the victim, who weighed about 280 pounds, and the following exchange occurred:

THE INTERPRETER: Lemus?

THE COURT: Yes, whatever. Americans would say Lamus so, you know, let's let it go.

THE INTERPRETER: Just for the witness.

THE COURT: You know what, Mr. [G.], the big guy, okay? You couldn't miss him, right?

9. During the direct testimony of the victim's cousin, the following exchange occurred:

THE COURT: I thought that when he ran out to his car was after the stabbing?

[PROSECUTOR]: No.

THE COURT: Well, it would sure be nice to put it in context, wouldn't it?

[PROSECUTOR]: Okay. Because I think I asked him.

THE COURT: Well --

By [PROSECUTOR]:

Q. Before the stabbing, had you seen him before that?

[PROSECUTOR]: I could just clarify with the witness.

THE COURT: That would sure be nice.

10. After a witness testified that a woman had re-entered a building, the following exchange occurred:

By [DEFENSE COUNSEL]:

Q. Did you hear anything that lady said as she was entering?

THE COURT: Did you hear anything from that lady? Like did she belch or did she say anything?

11. During the direct testimony of the defendant's teenage daughter ["A."], the following exchange occurred:

Q. [by DEFENSE COUNSEL:] What did you see your dad do? Just tell me specifically what your dad did physically.

THE WITNESS: He took something and he gave it to the guy so he would stop -- so he would stop hitting me.

THE COURT: He gave it to the guy?

THE WITNESS: Yeah.

By [DEFENSE COUNSEL]:

Q. You mean he hit somebody?

THE COURT: No, don't.

[PROSECUTOR]: Objection, leading.

[DEFENSE COUNSEL]: I don't understand what --

THE COURT: Counsel, I know, isn't it special, but you don't know what you are saying, but you are leading her. Isn't that special? Come on. You know exactly what you are doing. Don't get into it with me.

12. When you called upon the prosecutor to cross-examine A., you remarked, "Rise to the challenge."

13. When the defendant testified on direct examination about his background, the following exchange occurred:

THE COURT: ... May 4th, '03, what did you do for a living?

[PROSECUTOR]: '02?

THE COURT: '02, excuse me.

WITNESS: I hurt my waist and my arms in my job. I wasn't receiving any opinion [sic] kind of disability compensation.

THE COURT: Okay. That's all. Then nothing, he was doing nothing.

14. Later during the defendant's direct examination, when defense counsel told you that he wanted to find out what lobby the defendant was talking about, you stated in front of the jury: "I don't think there is any one of us that doesn't know except you."

15. The following exchange occurred during cross-examination of the defendant:

THE COURT: The court reporter is having a real problem because he [the defendant] is not being responsive and he is being louder than the interpreter and she can't hear the interpreter. So you are going to have to ask shorter questions or, you know, and I'm going to have to stop him and yes, no and do whatever. Anyway ---

By [PROSECUTOR]:

Q. When you first see [A.] in the lobby, are you standing right where that stick figure is where it says RC1?

A. I walked --

Q. Well, it's --

THE COURT: It's yes or no, sir. I mean --

THE WITNESS: Yes, yes.

By [PROSECUTOR]:

Q. And [A.] is up here towards the left of the doors entering into the salon, yes or no?

A. Yes.

Q. Okay. You can have a seat.

[DEFENSE COUNSEL]: Your Honor, I'm sorry, if the interpretation could be done consecutively, maybe the reporter would not have such a hard time.

THE COURT: It's impossible. You know what, I would like you to trade places for a minute and see how wonderful you can be. It's not the court reporter that's having problems with his interpretation. She's having problems because your client is yelling and talking loudly and she can't hear at the same time the softness of the interpreter's voice.

[DEFENSE COUNSEL:] If the interpreter were to finish, the defendant --

THE COURT: You know what, when you become a judge, in the meantime, let me do it. Thanks.

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, and 3B(4).

B. During the *Quila* trial, you improperly commented on the credibility of witnesses, as follows:

1. After the defendant testified that when he went to leave his five-year-old son at the end of the reception hall, he told his son, “There is going to be a shoot-out outside,” you remarked in front of the jury, “I’m sure to say to his five-year-old there is going to be a shoot-out, I will be back in a minute, really.”

2. On cross-examination, the prosecutor asked the defendant why he took a knife with him when he went to look for his children. The defendant replied: “Because I could see there was a lot of danger. The person told me this is becoming very dangerous.” When the prosecutor objected on hearsay grounds, you responded:

Well, you know what, ladies and gentlemen, it’s not for the truth of the matter stated and so, you know, it’s kind of hard to unring the bell, but it’s total hearsay. Just that it was said, whether or not you believe that anyway.

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(4), and 3B(5).

COUNT TWO

In January 2004, in *People v. Angel Matteotti*, No. 02CF0637, you presided over a trial involving charges of child molestation. During the trial, you lacked patience, dignity and courtesy when dealing with defense counsel as follows:

1. When the victim’s mother was being asked about when the defendant and her daughter returned to California from Seattle, you interjected, “How’s she going to know that when she was in the joint? Thank you very much.”

2. When defense counsel was examining the defendant’s mother about a conversation she had with the victim (“R.”), the following exchange occurred:

Q. Did she say whether a man had touched her in her vaginal area?

A. Yes.

THE COURT: Well, is that leading or what?

[DEFENSE COUNSEL]: Well, you objected as vague.

THE COURT: Well, you know what, you don't get to testify for her. Thank you very much.

[DEFENSE COUNSEL]: I don't want to.

THE COURT: If that wasn't leading, what was?

[DEFENSE COUNSEL]: I would like her to tell the story.

THE COURT: I would like her to tell it without you leading.

[DEFENSE COUNSEL]: Okay.

By [DEFENSE COUNSEL]:

Q.: What did [R.] tell you?

[PROSECUTOR]: Objection, hearsay.

[DEFENSE COUNSEL]: It's prior inconsistent statement.

THE COURT: As to what?

[DEFENSE COUNSEL]: As to [R.] denying being sexually molested at the motel.

THE COURT: Okay. Well, now that you have already told her the answer, now what?

3. After the prosecutor objected to a question posed to a witness by defense counsel, you said, "Sustained. Can we stay to the issues here because I would sure love to get -- I think you made your point, whatever that might be."

On June 24, 2005, the Court of Appeal affirmed the defendant's convictions, but was critical of your "style" and demeanor as evidenced by the above remarks. (*People v. Matteotti* (June 24, 2005, G033801) [nonpub. opn.])

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, and 3B(4).

COUNT THREE

In 2004, you presided over the case of *People v. Francisco Nunez*, No. 03HF1159. The defendant was charged with first-degree burglary. During the proceedings in the case, you lacked patience, dignity and courtesy when dealing with the defendant and his attorney, as follows:

1. During a pretrial appearance by the parties on August 31, 2004, the following colloquy took place:

THE COURT: Well, [the prosecutor and county counsel] are here on a subpoena that you have evidently issued ... and I don't know why I'm even here. This case isn't even on calendar. I'm happy to hear it. There is no affidavit from you why we are even here. There is no motion why we are even here, and I don't know what [sic] the substance of why we are even here.

[DEFENSE COUNSEL]: Your Honor --

THE COURT: No, not Your Honor. Your Honor would like you to say what it is, what the subject matter is here for that I'm not motioned on.

After defense counsel tried to explain, you stated: "I don't know of any law that allows you to go into chambers to say whatever you think any time you want any day you want just to appear in my court when I'm set for trial on another case this morning and to take up the court's time." When defense counsel asked you to review the case of *People v. Superior Court (Barrett)* (2000) 80 Cal.App.4th 1305 before making a ruling, the following exchange took place:

THE COURT: Isn't that nice of you? But why isn't that in your motion knowing that you were going to appear in front of me and take my time away from my jury trial? Now you are popping out all these little -- there's no motion before the court.

[DEFENSE COUNSEL]: Well, Your Honor, I guess we have a disagreement as to the proper procedure.

THE COURT: No, you have a problem with that procedure.

When defense counsel stated that he was following the procedures set forth in *Barrett* and another case, and had been told by your courtroom clerk that it was not necessary to calendar the matter, you sarcastically stated: “Oh, yeah, my clerk makes rulings like that.”

2. On November 8, 2004, during direct examination, defense counsel asked the defendant to look at a photograph and point to the front door of the apartment that was allegedly burglarized. After the defendant pointed at the left side of the photograph, the following exchange took place:

Q. Is that on the left side right here?

A. Yeah.

[DEFENSE COUNSEL]: Okay. Let the record reflect --

THE COURT: Thank you for identifying it for him.

[DEFENSE COUNSEL]: May the record --

THE COURT: You know, I’m tired of you doing that. If you want him to mark something, that’s fine, but don’t point to it and say oh, that window?

[DEFENSE COUNSEL]: Excuse me, Your Honor.

THE COURT: I do not --

[DEFENSE COUNSEL]: Your Honor --

THE COURT: I do not want you doing that.

Your comment “Thank you for identifying it for him[.]” was sarcastic and your other comments were made in a raised voice.

3. You also raised your voice at defense counsel during an ensuing discussion in chambers. After defense counsel pointed out to you that the defendant had pointed with his finger at one side of the photograph, the following exchange took place:

THE COURT: Well, then good. Do you have a pen in your hand right now?

[DEFENSE COUNSEL]: Yes.

THE COURT: Good. Use it. Have him mark it.

[DEFENSE COUNSEL]: That's fine. I will do that.

THE COURT: Good.

[DEFENSE COUNSEL]: I was merely asking him.

THE COURT: Oh, that's what that is?

[DEFENSE COUNSEL]: Yes, Your Honor, that's what it was.

THE COURT: Sure.

Your comments "Oh, that's what that is[]" and "Sure[]" were made in a sarcastic tone of voice.

4. On November 9, 2004, during cross-examination of the defendant, you improperly conveyed to the jury your disbelief of the defendant's testimony by mocking his description of how he knocked on a window:

Q. So you had to pull [the screen] enough where you can get your entire fist to knock?

A. Not entire fist. I went like this (indicating).

Q. Well, you had to pull it out enough for you to --

[DEFENSE COUNSEL]: Excuse me, Your Honor, the record should reflect that the witness with his right hand reached under the top piece of paper of the pad, and in a knocking motion, touched the pad underneath it. And his hand --

THE COURT: But it was -- okay.

THE WITNESS: And his hand was with his knuckles curled at the second knuckle.

THE COURT: Yes, it wasn't a regular knock with his index finger. Did you see how he did that, ladies and gentlemen? Turn around and show them. Show them how you knocked.

THE WITNESS: How I knocked? Like this (indicating).

THE COURT: Oh, you knocked like that now? Like this or how did you do it? Show them how you did it.

THE WITNESS: All right.

THE COURT: No face them and show them.

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, and 3B(4).

COUNT FOUR

In December 2004, you presided over the trial in *People v. Joseph Urias*, No. 04HF1198. The defendant was charged with and convicted of aggravated assault. The Court of Appeal later reversed the conviction. (*People v. Urias* (July 31, 2006, G035179) [2006 WL 2128631] [nonpub. opn.] [hereafter *Urias*].) During the trial, you became embroiled and lacked patience, dignity and courtesy when dealing with the defendant and both attorneys, as follows:

1. When defense counsel ("Ms. F.") said at the beginning of trial that she had a doctor's appointment two days later, you told her to reschedule it. When defense counsel stated that she had scheduled the appointment three months previously and could not reschedule it, you said: "You know, I hear this all day long.... You guys aren't a bunch of babies."
2. On the second page of testimony on the first day of trial, the prosecutor asked the alleged victim ("Mr. W."), "[D]id you say how long you [and the defendant] have been living together?" Mr. W. replied, "No, I --." Even though Mr. W. had not testified about that, you interrupted and stated: "You have though. Thank you."

3. During the direct examination of Mr. W., after defense counsel asked to approach the bench on a matter relevant to a pending question, you made the following sarcastic remarks in front of the jury: “Well, you know, you can cover those things on cross-examination. I don’t see any issues with it myself. Come on up here and tell me about all these great issues here. I mean, he is describing something.”

4. As the Court of Appeal found, you also “occasionally lectured and scolded the prosecutor....” When the prosecutor asked to play the tape of Mr. W.’s 911 call, but told you that she only had two copies of the transcript because she had made extra copies of the wrong transcript, you stated in front of the jury: “Unbelievable. Okay. So I need sixteen copies, seventeen copies.” While court staff was making copies, you told the jury: “Well, I told them I was going to be their tax dollar at work. You guys are on your own.”

5. When the prosecutor asked Mr. W. to identify on a photograph where on his head he received an injury, you interrupted the answer and stated: “I mean, it speaks for itself, doesn’t it? That red stuff isn’t ketchup.” When the prosecutor said, “Okay,” you said: “Really, come on. These jurors are not that idiotic.”

6. The defense theory was that Mr. W. started the fight because he was angry at his roommate (the defendant), who had said that he was going to move out without paying any more rent. Prior to trial, you stated that on the rent dispute, the attorneys could only ask, “[D]id you guys have an argument about the payment of rent and moving out[]” or “having to move out? End of case. What is [sic] the details of that, who cares.” When defense counsel stated that the fact that Mr. W. was having financial trouble “might be a motive for him to become frustrated[]” with the defendant’s decision not to pay any more rent, you responded: “Well, it might, might, might, should have, could have, would have. I’m not here for might. I’m here for what is. [¶] So anyways, I’m here for whether or not one person assaulted another.”

During the prosecutor's direct examination, Mr. W. testified that about two weeks before the alleged assault, he and the defendant had a verbal dispute about Mr. W. moving out, and the defendant yelled at him. During cross-examination, Mr. W. was questioned about the "dispute" about the "apartment and rent...." Mr. W. testified: "It wasn't about rent. It was more about when I was moving out." Shortly thereafter, defense counsel asked Mr. W.: "[I]sn't it true Mr. Urias was planning to move out, as well?" After a relevance objection, you referred to your pretrial ruling and stated that "[t]hat's part of the 402 motion." You refused defense counsel's request to approach the bench and added:

If you weren't listening to my 402 motions, and that's why we have them outside of the presence of the jury, that if they have -- I will make a comment then.
Ladies and gentlemen --

When defense counsel tried to interrupt, you stated: "No, no, you know what, you are violating my rule and I'm going to tell the jury." Addressing the jury, you stated:

Ladies and gentlemen, I make rulings in this case long before the case and I made the rulings in this case and you decide what the facts are. And if there was some sort of a civil dispute over whatever it might have been, this is not the way to do it, okay? That's why we have civil courtrooms. And so you are not to - - any concern about what [sic] the underlying dispute is of no relevance to this case as to these present charges.
Thank you.

When defense counsel again asked Mr. W., "Do you know whether or not Mr. Urias was planning to move out?," you told defense counsel to "stop it or I'm going to hold you in contempt." When defense counsel asked if she could make a record, you replied, "Yes, I'm going to make a record myself."

In chambers, you accused defense counsel of violating your 402 rulings. You stated: "When I make a ruling, I'm not just some fly by night here that's sitting here and I don't want you to take me on or me to take you on in front of the

jury.” When defense counsel pointed out that you had allowed the prosecutor to ask “certain questions on direct[,]” you responded that defense counsel “did not object to any of it.” You then accused defense counsel of failing to object so that she could circumvent your pretrial ruling. Addressing defense counsel, you stated: “[Y]ou know what, I might not be good looking, but I’m not stupid. You are always waiting for a little door so you can say oh, yeah.”

As found by the Court of Appeal, your “‘elementary school scolding of defense counsel’ was unwarranted.” (*Urias, supra*, at p. *5.)

7. In front of the jury, you were unnecessarily critical of how defense counsel tried to impeach Mr. W. with a prior inconsistent statement. After defense counsel asked Mr. W. whether he testified at the preliminary hearing that the defendant was “face forward on top of me[,]” the following colloquy took place:

THE COURT: Wait a minute, wait a minute.
Hold on.

[DEFENSE COUNSEL]: I’m sorry.

THE COURT: Since when -- what is that?

[DEFENSE COUNSEL]: Impeachment.

THE COURT: No, it’s not. That is so improper. If you want to ask him and let him read supposedly [sic] what the question was and then ask about it, you may.

[DEFENSE COUNSEL]: I’m not --

THE COURT: Excuse me, that’s the way you do it.

[DEFENSE COUNSEL]: I’m not refreshing his recollection. I’m impeaching --

THE COURT: I’m refreshing yours.

[DEFENSE COUNSEL]: -- with a prior statement.

THE COURT: Get over here and let him read it.

As the Court of Appeal found, you improperly stated your command (“Get over here and let him read it”) in an “imperious, disrespectful way....” (*Urias, supra*, at p. *6.)

When defense counsel changed her mind about what testimony to impeach the witness with, the following colloquy took place:

THE COURT: No, no, no, that was page ten that you were referring to, line 21 down to 25, weren’t we? Did you change programs on me or what?

[DEFENSE COUNSEL]: I did.

THE COURT: Pardon?

[DEFENSE COUNSEL]: I did.

THE COURT: Well, then show him what was before.

[DEFENSE COUNSEL]: I don’t think I need to. I don’t have to impeach him with that. I’m going to --

THE COURT: Well, that assumes that you are impeaching him at all.

8. In front of the jury, you criticized defense counsel for trying to mark as an exhibit a diagram that had been introduced at the preliminary hearing, without first bringing up the matter outside the presence of the jury. You stated: “Well, you know what, I have a real problem with that because I have a problem with when a diagram is being made, there are questions with it and so I’m not allowing you to mark that as Defense E without the questions then going with it.” You added, in front of the jury: “And that should have been handled in a 402 motion, also.” The proceedings then continued in chambers. At the end of the chambers conference, for no apparent reason, you stated, “I have had it up to here with both of you.”

9. On redirect examination, Mr. W. testified that he mentioned to a doctor the night of the altercation that he had suffered an injury to his eye. On recross,

defense counsel asked Mr. W. whether the police report mentioned the alleged injury to his eye. You sustained an objection on the ground that the question called for speculation. (There was no hearsay objection.) So defense counsel asked the witness whether he had reviewed the police report. The following colloquy then took place:

THE COURT: You know what, that doesn't make it hearsay? I mean, come on. What part of my rulings don't you respect? You know what, we took the same evidence course. That's hearsay, isn't it?

[DEFENSE COUNSEL]: Well --

THE COURT: Would you agree to that?

[DEFENSE COUNSEL]: Not --

THE COURT: Even if he reads it, it's hearsay, Ms. [F.], so stop it.

[DEFENSE COUNSEL]: I'm just looking for impeachment.

THE COURT: Isn't that nice. But you know what, you know, I make rulings. You are to abide by them. You got it?

As the Court of Appeal found, your "demeaning lecture" was "wholly uncalled for. It was enough to sustain the objection. Making fun of a lawyer in front of the jury is unacceptable, particularly where, as here, the lawyer is doing her best to represent her client and, while perhaps making mistakes from time to time, is not demonstrating disrespect of the court." (*Urias, supra*, at p. *7.)

10. When defense counsel asked Officer Jason Scheafer on cross-examination whether he wrote his report on August 3, the following colloquy took place:

THE COURT: Why are we even going into this? Is this -- could I see you at the bench for a minute?

[DEFENSE COUNSEL]: I'm almost done.

THE COURT: I don't care whether you're almost done or not. Come on up.

11. Mr. W. testified that while he was lying on the floor during the altercation, he grabbed a log and lifted it about "four or five inches off of the ground," but put it down when the defendant told him, "Don't make it worse than it is." When defense counsel asked Officer Scheafer whether Mr. W. told him he picked up a log, thinking about hitting the defendant, and the prosecutor objected on hearsay grounds, you stated: "Sustained. Oh, hello, good. Amazing."

12. When defense counsel asked Officer Scheafer, "When Mr. [W.] told you that he lifted a log --" and the prosecutor objected that it "misstates facts not in evidence[,]" you stated: "It's still hearsay. I mean, what is the matter?"

13. After an in chambers conference, defense counsel asked Officer Scheafer whether he recalled testifying at the preliminary hearing that Mr. W. was vague about what happened during the log incident. You interrupted and the following colloquy took place in front of the jury:

THE COURT: Well, you know what, any time that you refer to a preliminary hearing -- you know, I hate to sound like I'm giving a lesson here when we have all been out of law school a long time, but if you tell me that that is the proper procedure to ask somebody about a preliminary hearing transcript without telling the district attorney and the court what page you are talking about and giving him an opportunity to read it then, you know, I mean, then I would like to see what the procedure is. Because if we are having an amendment to evidence class, I'm excited about it, but I would sure like to hear the basis for it.

[DEFENSE COUNSEL]: If you --

THE COURT: And out of courtesy, Rules of Court and so forth, I want to know what page you are referring to.

[DEFENSE COUNSEL]: Okay. Thank you, Your Honor. I'm referring to page 59 of the preliminary hearing --

THE COURT: Hold on. And that's improper the way you are doing it and you know it. So, you know, and if this was your first time that we are doing this throughout the trial, you know, I wouldn't be all upset about it. But hold on a minute.

[DEFENSE COUNSEL]: Well --

THE COURT: Wait a minute. What lines are you talking about?

[DEFENSE COUNSEL]: Line nine.

THE COURT: Through?

[DEFENSE COUNSEL]: Sixteen.

...

THE COURT: Have you read this?

[PROSECUTOR]: Yes.

[DEFENSE COUNSEL]: For clarification, I would also like to add lines three through five.

THE COURT: There's no such thing as clarification.

As the Court of Appeal found, your lecturing of defense counsel was demeaning. (*Urias, supra*, at p. *7.)

14. On direct examination, the defendant testified that after an exchange of words between him and Mr. W., the defendant "noticed that he [Mr. W.] put his food down and then the next thing I know, he was pursuing up here[]" (referring to a diagram). When the prosecutor did not object, you stated: "Pursuing calls for a conclusion." You continued:

If you are not going to object, I mean, you know, ladies, I have to present evidence by way of the Evidence Code and it's amazing around here what's happening. Okay. And I'm not going to be trying your case for you, and it's not your first case. You all know that it's, you know, I need you to go by the Evidence Code. Thank you.

15. On cross-examination, the prosecutor asked the defendant if, prior to the altercation, Mr. W. gave him “a dirty look.” Defense counsel objected that the question misstated the evidence. You then asked the defendant, “What kind of a look was it?” The following exchange then occurred in front of the jury:

THE WITNESS: It was a look like he had something to say to me.

By [PROSECUTOR]:

Q. Something to say like Happy Birthday or something not nice?

[DEFENSE COUNSEL]: Objection, argumentative, misstate [sic] the evidence.

THE COURT: Overruled.

THE WITNESS: Like where is my rent money kind of look.

MS. [PROSECUTOR]: Your Honor, I would move to strike that as nonresponsive.

THE COURT: That was convenient, wasn't it, Mr. Urias?

THE WITNESS: She asked me, Your Honor.

THE COURT: Yes, that's nice.

THE WITNESS: He had nothing else to say.

THE COURT: Well, that's great. That's nice that you can interpret what somebody is going to say to you.

[DEFENSE COUNSEL]: Your Honor, I just --

THE COURT: You know what, don't start again today with me, ladies, because you know what, there are Evidence Code procedures and I have made rulings in this case. And if we were here on a landlord/tenant situation, we would be here on that.

So I would ask that both of you refrain from taking me on today because you know what, I'm tired of it. I have had it to here, so stop.

[DEFENSE COUNSEL]: Okay.

THE COURT: And I want you to conduct yourselves professionally by the Evidence Code.

And I want you not to slip in things that were -- I don't know how you could possibly tell that that was that kind of a look, so anyways --

As the Court of Appeal found, your "sarcastic comments were inappropriate and unjustified[.]" and expressing derision for the defendant's answers and implying that he was deceitful "was unfair and constituted misconduct." (*Urias, supra*, at p. *6.)

16. After the prosecutor asked the defendant on cross-examination about the glare that Mr. W. gave him before the altercation, you disparaged the defendant's testimony during the following exchange:

THE WITNESS: I wasn't exactly focusing on the glare per se. I was focused on --

THE COURT: You know what, I'm past the glare or whatever look he had on his face that made you say you look like a clown or you are a clown, Mr. Urias.

THE WITNESS: It wasn't the look, Your Honor. It was the whole demeanor of the -- of the evening.

THE COURT: Well, whatever that is.

17. Mr. W. testified that the altercation began when the defendant hit him over the head with a wineglass. The defendant admitted that he had been drinking wine and that prior to the altercation, he walked toward the kitchen to get something to drink. However, the defendant testified on cross-examination that he did not know whether he was going to the kitchen to refill his wineglass. The defendant also testified that he did not have his wineglass in his hand when he walked toward the kitchen or to the point where he first had physical contact with Mr. W.

There ensued the following exchange:

Q. [by PROSECUTOR]: Okay. Because just a second ago when I asked you if you recalled if you had your wine glass in your hand, you said you didn't recall. Are you now telling me that you do recall that you did not have your wine glass?

[DEFENSE COUNSEL]: Objection, misstates the evidence.

THE COURT: Overruled.

THE WITNESS: After the fact, when all the events took place, I know that I didn't have the wine glass in my hand.

By [PROSECUTOR]:

Q. I just asked you --

THE COURT: She is just asking you whether or not when you went to the kitchen, whether you had your wine glass in your hand. How difficult is that?

THE WITNESS: No, I said -- I already answered no.

THE COURT: Okay.

By [PROSECUTOR]:

Q. Okay. You didn't say a second ago that you didn't recall whether you had it or not?

THE COURT: Don't worry about it. It's argument[at]ive and we'll never get it.

Then, on redirect examination, defense counsel asked the defendant, "Did you tell the officer whether or not you had a wine glass in your hand?" After sustaining an objection, you reversed yourself and took over the examination, as follows:

THE COURT: No, did you tell him you had a wine glass in your hand?

THE WITNESS: No.

THE COURT: Is that "yes" or "no"?

THE WITNESS: No.

THE COURT: Thank you.

By [DEFENSE COUNSEL]:

Q. When he asked you if you had a wine glass in your hand, did you give a response?

A. I did.

Q. What was that response?

A. I said I could have.

[PROSECUTOR]: Your Honor, I would object. It calls for hearsay.

THE COURT: Okay. He said he could have. Okay. Now you said could have. I thought you said just now that you said no?

THE WITNESS: You asked me what I told the officer and I didn't tell him that I had the wine glass. I said I could have had it.

THE COURT: I asked you yes or no and you said no.

As the Court of Appeal found, your comments improperly suggested that Mr. Urias's testimony was "inconsistent and deliberately untruthful." (*Urias, supra*, at p. *8.)

On July 31, 2006, the Court of Appeal, partly due to your "persistent and indefensible misconduct," reversed the conviction and held that the defendant was entitled to a retrial before a different judge. (*Urias, supra*, at pp. *2, 10.) The court found that you "belittled, scolded and punished" defense counsel in front of the jury, made "caustic, condescending remarks" to the defendant and his counsel, created an "atmosphere of unfairness," and "substantively undermined the defense theory of the case." (*Id.* at pp. *2, 3, 8.)

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(4), and 3B(5).

COUNT FIVE

On December 20, 2004, you presided over jury selection in *People v. Troy Kercheval*, No. 03HF1721, and mistreated a prospective juror ("A.H."). After the prospective juror told you, in response to your inquiry about whether she had a time problem, that she was studying to become a social worker and had to finish a paper, you said:

Well, that's nice. I've got lots of things to do, too. My problems are of constitutional proportions, so you are going to have to do that at night.

Although you ordered the prospective jurors to return to court at 1:30 p.m., A.H. did not return to court until 1:57 p.m. Because A.H. had been in the jury box, you replaced her with a new prospective juror. When A.H. returned to the courtroom, the following exchange took place:

THE COURT: It's now three minutes to 2:00. You were ordered back here at 1:30.

PROSPECTIVE JUROR []: Yes.

THE COURT: But I don't care what your excuse is. It's totally unacceptable unless there was some dire emergency that kept you from being here at 1:30 and I don't have time to talk to you. So I'm ordering you back here tomorrow morning at 8:30 to talk to me about it. I will see you tomorrow morning at 8:30.

It's very upsetting to me. I couldn't go on. I can't wait for you. I have lots of things to do to try to get people out of here before Christmas.

PROSPECTIVE JUROR []: I cannot comment? I'm just telling you Jamboree [Road], they are repairing and I was there for twenty minutes and I couldn't get in because nobody was here to help me to tell me which room to go.

THE COURT: Well, what room would you go to other than this one?

PROSPECTIVE JUROR []: I know, but I couldn't find it, you know. I was here. I went to another room and it was locked and so that's why I went to another lady and I'm here for thirty minutes to get in and nobody was there to help me.

THE COURT: Isn't it funny that all these people found their way back? I don't have time to talk to you right now. So leave your phone number and you are going to have to come back and talk to me about that. Very serious when you don't follow my orders. And I have a big job to do here and it's not on whim or passion or whatever. But you guys are on order to be here and so that's the thing.

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, and 3B(4).

YOU ARE HEREBY GIVEN NOTICE, pursuant to Rules of the Commission on Judicial Performance, rule 118, that formal proceedings have been instituted and shall proceed in accordance with Rules of the Commission on Judicial Performance, rules 101-138.

Pursuant to Rules of the Commission on Judicial Performance, rules 104(c) and 119, you must file a written answer to the charges against you within twenty (20) days after service of this notice upon you. The answer shall be filed with the Commission on Judicial Performance, 455 Golden Gate Avenue, Suite 14400, San Francisco, California 94102-3660. The answer shall be verified and shall conform in style to the California Rules of Court, rule 14(b). The Notice of Formal Proceedings and answer shall constitute the pleadings. No further pleadings shall be filed and no motion or demurrer shall be filed against any of the pleadings.

This Notice of Formal Proceedings may be amended pursuant to Rules of the Commission on Judicial Performance, rule 128(a).

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

DATED: December 21, 2006

/s/

MARSHALL B. GROSSMAN
CHAIRPERSON